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Foreign Affairs and Domestic Reform

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BOOK REVIEW

FOREIGN AFFAIRS AND DOMESTIC REFORM

Cold War Civil Rights: Race and the Image of American Democracy. By Mary L. Dudziak. Princeton: Princeton University Press. 2000.

*Curtis A. Bradley**

INTRODUCTION

TO what extent can foreign affairs influence U.S. domestic reform? In her book *Cold War Civil Rights*,¹ Professor Mary L. Dudziak explores this fascinating question in the context of U.S. civil rights reform from the mid-1940s through the 1960s. Relying on a variety of sources, including foreign newspapers, publications of the United States Information Agency, diplomatic correspondence, public speeches, and Supreme Court briefs, Professor Dudziak “traces the emergence, the development, and the decline of Cold War foreign affairs as a factor influencing civil rights policy”²

In a clear and concise presentation, Professor Dudziak documents how racial discrimination and violence during this period (against both U.S. citizens and foreign visitors) generated significant international attention and criticism, and how the Soviet Union capitalized on these problems in its anti-American propaganda. She also documents how U.S. officials perceived civil rights problems in Cold War terms: By undermining the image of American democracy abroad, U.S. civil rights problems were viewed as a threat to U.S. leadership and influence around the world, especially in the newly independent and developing countries. As a

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¹ Mary L. Dudziak, *Cold War Civil Rights: Race and the Image of American Democracy* (2000).

² *Id.* at 17.

result, domestic civil rights reform during this period, Professor Dudziak argues, "came to be seen as crucial to U.S. foreign relations."³

Professor Dudziak's book is an important contribution to the literature on the U.S. civil rights movement. Most accounts of U.S. civil rights reform have focused exclusively on the various *domestic* influences on this reform, such as Supreme Court decisions, Executive Branch interventions, federal legislation, litigation efforts of groups like the NAACP, civil disobedience, and economic and social conditions. Professor Dudziak's book reminds us that the internal debates and struggles over U.S. civil rights reform took place on a global stage, and she usefully explores potential influences on civil rights reform that have, until now, been largely ignored. Her book also offers a more general reminder of the difficulty of drawing a sharp line between domestic and foreign affairs, a difficulty only heightened today in this age of globalization.

Of course, to say that Cold War foreign affairs played a role in U.S. civil rights reform does not tell us much about its *relative* influence as compared with other influences, a difficult if not impossible empirical question. Even in light of the substantial evidence that Professor Dudziak presents suggesting that U.S. government officials linked race relations to Cold War politics, one still might conclude that the influence of the Cold War concerns on civil rights reform was relatively minor when compared with other, domestic influences. Nevertheless, regardless of whether Professor Dudziak is describing a central feature of the civil rights reform movement or something on the periphery, her book undeniably enriches our understanding of this important and complex period of modern American history.

While Professor Dudziak notes certain setbacks and limitations on Cold War-induced civil rights reform, in general she presents a positive account. In her narrative, meaningful civil rights reform is encouraged by a complex but progressive foreign relations dynamic. As she explains:

Domestic racism and civil rights protest led to international criticism of the U.S. government. International criticism led the federal government to respond, through placating foreign critics

³ Id. at 6.

by reframing the narrative of race in America, and through promoting some level of social change. While civil rights reform in different eras has been motivated by a variety of factors, one element during early Cold War years was the need for reform in order to make credible the government's argument about race and democracy.⁴

Given this generally positive account, it is possible that commentators and advocacy groups will be tempted to read into Professor Dudziak's narrative more general lessons about the efficacy of international pressure, as well as the futility of U.S. isolationism. Professor Dudziak herself hints at such lessons when she suggests in the introduction to her book that "the borders of U.S. history are not easily maintained" because international developments and pressures "help drive domestic politics and policy" and "influence[] the timing, nature, and extent of social change."⁵

In this Book Review, I will compare Professor Dudziak's historical narrative with certain other *international* influences on U.S. domestic law, both during the time period covered by Professor Dudziak's book and in more recent years. In the process, I will make two general observations. First, the influence of foreign affairs on U.S. domestic practices is very contingent. Even if Professor Dudziak is correct that foreign affairs had significant influence on U.S. civil rights reform in the Cold War era, there is no guarantee of such influence on other issues or at other time periods. Second, there is no guarantee that the influence of foreign affairs on U.S. domestic practices, when it occurs, will be either positive or meaningful. Even if foreign affairs pressures sometimes induce positive reform, they may also induce restrictions on individual liberties, a phenomenon evident during the civil rights era. In addition, the reforms induced by foreign affairs pressures may be primarily symbolic in nature and thus actually delay or prevent meaningful reform.

I. CONTRAST WITH INTERNATIONAL HUMAN RIGHTS LAW

As noted above, Professor Dudziak focuses on international politics and pressure during the mid-1940s through the 1960s—a

⁴ Id. at 13–14.

⁵ Id. at 17.

period in which U.S. foreign affairs was dominated by Cold War and anti-Communist concerns. Although she does not discuss it expressly, there was substantial international *legal* activity occurring during this time period, and this activity had important connections with the civil rights reform efforts she describes. In particular, international institutions and treaty regimes were being developed to protect human rights, including rights relating to the equal treatment of racial groups.

At first, the United States took the lead in pushing for international human rights developments. Near the end of World War II, the United States helped establish the United Nations, the Charter for which was signed in San Francisco in 1945, and the headquarters for which was subsequently placed in New York. The U.N. Charter contains, among other things, broad general commitments aimed at the protection of human rights.⁶ These commitments reflected a dramatic change in the nature and scope of international law; henceforth it would govern not only relations between nations but also some of the ways in which nations interact with their own citizens.

The United States was initially a strong supporter of this expansion of international law. Indeed, in the late 1940s, the United States took the lead in pushing for the development of a specific body of international human rights law to give effect to the general commitments of the U.N. Charter. Through the efforts of Eleanor Roosevelt, who chaired the U.N. Human Rights Commission, and others, a non-binding Universal Declaration of Human Rights was drafted and approved by the United Nations.⁷ This declaration, among other things, calls upon nations to recognize the equality of all human beings and to outlaw any racial discrimination.⁸

The United States also was involved in the late 1940s in the drafting of a treaty outlawing genocide and calling for the prosecu-

⁶ For example, Article 55 of the U.N. Charter states that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion," and Article 56 states that all members of the United Nations pledge to take action to achieve this goal. U.N. Charter arts. 55, 56.

⁷ See Mary Ann Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights* (2001).

⁸ Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., pt. 1, Supp. No. 1, at 71, U.N. Doc. A/810 (1948).

tion of individuals engaged in genocide, a treaty that was completed and opened for ratification in 1948.⁹ Immediately thereafter, members of the United Nations began drafting and negotiating treaties designed to give binding legal effect to the rights in the Universal Declaration, as well as other rights. Again, the United States played a lead role up through the early 1950s. One of the key arguments for U.S. involvement in these various efforts was the need to maintain the United States' position of moral leadership in the world, especially with respect to the developing and newly independent nations. In other words, the same sort of Cold War arguments that were being made in favor of U.S. civil rights reform were being made about U.S. involvement in international human rights law.¹⁰

The connections between Cold War civil rights reform and international human rights law do not end there. The emerging body of international human rights law had potentially *direct relevance* to U.S. civil rights reform. Principles of nondiscrimination and equal treatment were quite naturally being incorporated into the international legal materials, and civil rights groups began arguing that the United States was in violation of these principles. In addition, the United Nations became a forum for complaints about U.S. civil rights practices.

The following examples, a number of which are mentioned in Professor Dudziak's book, illustrate some of the efforts to connect civil rights reform with the emerging international human rights law regime:

- In 1946, the National Negro Congress filed a petition with the U.N. Human Rights Commission seeking "relief from oppression" for African-Americans.¹¹
- Also in 1946, the National Lawyers Guild argued that Congress should enact anti-lynching legislation as an im-

⁹ See Convention on the Prevention and Punishment of the Crime of Genocide, opened for signature Dec. 9, 1948, 78 U.N.T.S. 277 (entered into force Jan. 12, 1951; for the United States Feb. 23, 1989).

¹⁰ See, e.g., The Genocide Convention: Hearing Before the Subcomm. on the Genocide Convention of the S. Comm. on Foreign Relations, 81st Cong. 19-20 (1950) (statement of Dean Rusk, Deputy Under Secretary of State) (arguing that the United States should ratify the Genocide Convention in order to continue its "moral leadership in international affairs").

¹¹ Dudziak, *supra* note 1, at 43-44.

plementation of U.S. obligations under the United Nations Charter.¹²

- In 1947, the NAACP submitted to the United Nations an “Appeal to the World” protesting racial discrimination in the United States.¹³
- In the early 1950s, a group called the “Civil Rights Congress” submitted a petition to the United Nations arguing that, by tolerating violence and mistreatment of African-Americans, the United States was engaged in genocide, as prohibited by the Genocide Convention.¹⁴

These efforts to rely on international institutions and international human rights law, however, had a much less successful history than the foreign affairs pressures described in Professor Dudziak’s narrative. None of the above efforts ever proceeded very far, either domestically or internationally. Moreover, by the early to mid-1950s, there was a substantial backlash in the United States against international human rights law, in part due to fears that it would be used to compel civil rights reform. In this context, arguments about federalism, U.S. sovereignty, and fear of Communist influence prevailed,¹⁵ even though they do not prevail in Professor Dudziak’s narrative.

The American Bar Association and a number of senators went so far as to introduce a constitutional amendment to limit the treaty power in an effort to preclude the use of international human rights law to change U.S. domestic law—an amendment known as the “Bricker Amendment,” after one of its key sponsors, Senator John Bricker of Ohio.¹⁶ Throughout the early 1950s there were vigorous debates about this constitutional amendment proposal, and one version of the Bricker Amendment came within one vote of being approved by two-thirds of the Senate.¹⁷ A central

¹² Duane Tananbaum, *The Bricker Amendment Controversy: A Test of Eisenhower’s Political Leadership* 3 (1988).

¹³ Dudziak, *supra* note 1, at 44.

¹⁴ *Id.* at 63–64.

¹⁵ See generally Natalie Hevener Kaufman, *Human Rights Treaties and the Senate: A History of Opposition* 64–93 (1990) (discussing these arguments).

¹⁶ See generally *id.* at 94–116 (discussing the Bricker Amendment); Tananbaum, *supra* note 12 (same).

¹⁷ Curtis A. Bradley, *The Treaty Power and American Federalism, Part II*, 99 *Mich. L. Rev.* 98, 122 (2000).

concern of supporters of the proposed Amendment was that international human rights law might be used to compel changes in U.S. domestic practices, including its practices in the area of race relations.¹⁸ There were also concerns that international human rights law might be used to push the United States towards socialism and that it would undermine American federalism.¹⁹

The Bricker Amendment efforts were defeated by the late 1950s. This was due in part, however, to a commitment from the Eisenhower Administration that it would not enter into any human rights treaties and would not use the treaty power to make domestic legal reforms.²⁰ The backlash against employing treaties to effectuate domestic reform was so strong that the United States did not begin to reconsider this position until the late 1970s, and it did not begin ratifying any of the human rights treaties until the late 1980s—at the tail end of the Cold War. To take an example specifically related to Professor Dudziak's narrative, the International Convention on the Elimination of All Forms of Racial Discrimination took effect internationally in the late 1960s, but it was not ratified by the United States until 1994.²¹ Furthermore, when the United States did finally begin ratifying human rights treaties, it consistently attached a series of reservations to each ratification designed to prevent the treaties from changing existing U.S. law.²²

Why is this history of U.S. involvement with international human rights law so different from the history described by Professor Dudziak? There are probably many reasons, but I want to suggest one in particular: The international human rights law pressure was, almost by definition, very legalistic in its orientation. According to the international human rights law arguments, the United States either already was or should become legally bound to change its internal practices. American responses to this pressure, not surprisingly,

¹⁸ Kaufman, *supra* note 15, at 108–10.

¹⁹ *Id.* at 111–13.

²⁰ Bradley, *supra* note 17, at 122–23.

²¹ International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Mar. 7, 1966, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969; for the United States Nov. 20, 1994).

²² See Curtis A. Bradley & Jack L. Goldsmith, *Treaties, Human Rights, and Conditional Consent*, 149 U. Pa. L. Rev. 399, 400–01 (2000); Louis Henkin, *U.S. Ratification of Human Rights Treaties: The Ghost of Senator Bricker*, 89 Am. J. Int'l L. 341 (1995).

were very legal in nature as well—either denials of the international law claims or attempts to change the U.S. Constitution to prevent these claims from taking hold. In addition, these sorts of legal claims, because they threatened to shift some of the decisionmaking concerning U.S. domestic practices away from U.S. control, generated significant and longstanding concerns about the erosion of American sovereignty.

The international pressure that Professor Dudziak focuses on, by contrast, was not primarily about legal requirements. The pressure was not based on claims that the United States was violating an international law of human rights and that it was required as a matter of law to change. Rather, this pressure primarily involved appeals to U.S. self-interest and morality. Although even this pressure generated substantial resistance, it generated less ultimate backlash than international human rights law, in part because it was viewed as subject to greater U.S. control and therefore as less of an affront to U.S. sovereignty. As a result, there may be a more general lesson here about the dangers of converting international pressure into international *legal* pressure. This lesson is illustrated by a more contemporary human rights issue—the U.S. death penalty.

II. THE DEATH PENALTY IN THE UNITED STATES

Although not the focus of her analysis, Professor Dudziak opens and closes her book with brief references to the death penalty. At the beginning of her book, she describes international protest in the late 1950s over a death sentence issued in Alabama against an African-American for a robbery conviction.²³ At the end of her book, she observes that U.S. civil rights practices are not the only area of U.S. law that has been subjected to international pressure, and she notes that another example is the death penalty.²⁴

There has indeed been substantial international pressure on the United States, especially in recent years, to limit or abolish its use of the death penalty.²⁵ U.S. executions, like the civil rights crises

²³ See Dudziak, *supra* note 1, at 3–6.

²⁴ *Id.* at 253–54.

²⁵ For background information on the death penalty in the United States and for documentation of the points discussed in this Part, see <http://www.deathpenaltyinfo.org> (last visited October 1, 2001).

described by Professor Dudziak, often receive substantial attention and criticism in the foreign press. Many nations refuse to extradite suspects to the United States if those suspects will face the death penalty, and these extradition cases also receive significant international attention. In addition, U.S. death penalty practices are frequently criticized within the United Nations, and a number of U.N. resolutions have been passed recently calling for a worldwide moratorium on the death penalty.

These efforts, however, do not appear to have had much effect on U.S. practice.²⁶ Many U.S. states still retain the death penalty, as does the federal government. In addition, a number of U.S. states persist in executing juvenile offenders—the aspect of the U.S. death penalty that has received probably the greatest international criticism. And, in a case challenging the juvenile death penalty in 1989, the U.S. Supreme Court, presented with information about the international criticism of this practice, emphasized that “it is *American* conceptions of decency that are dispositive,” not international conceptions.²⁷ Furthermore, when U.S. treatymakers have ratified human rights treaties in recent years, they have expressly declined to agree to any restriction on the death penalty, to the consternation of many other nations.²⁸ Moreover, unlike their supportive role in the civil rights cases described by Professor Dudziak,²⁹ the Justice and State Departments have filed briefs in a

²⁶ The number of U.S. executions has risen in most years during the last decade, and there has not been any substantial reduction during this period in the number of states that utilize the death penalty. Furthermore, despite international criticism, the federal government recently executed Timothy McVeigh and Juan Garza, the first federal executions in over thirty-five years. See <http://www.deathpenaltyinfo.org>. Although there has been some recent erosion of public support in the United States for the death penalty, there is little indication that this erosion of support has much if anything to do with international pressure, as opposed to factors such as reductions in the crime rate and developments in DNA testing.

²⁷ *Stanford v. Kentucky*, 492 U.S. 361, 369 n.1 (1989).

²⁸ For example, when ratifying the International Covenant on Civil and Political Rights, U.S. treatymakers attached a reservation stating that “the United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age.” U.S. Reservations, Understandings, and Declarations, International Covenant on Civil and Political Rights, 138 Cong. Rec. 8070, para. I(2) (1992).

²⁹ Dudziak, *supra* note 1, at 90–102.

number of recent cases *resisting* the efforts of litigants to use international norms to restrict the death penalty.³⁰

Why has international pressure on this issue been relatively ineffective as compared with the pressure on civil rights reform? One obvious possibility is the lack of Cold War competition. The U.S. government does not have the same concrete interest it had in the 1950s and 1960s in winning a propaganda war concerning human rights. Unlike during that period, the United States is not today, to use Professor Dudziak's words, "engaged in a world struggle for freedom, against the forces of communism."³¹

This explanation does not seem entirely satisfactory, however, because foreign affairs pressures on the U.S. death penalty practice seemed ineffectual even before the end of the Cold War. Another possible explanation is that the death penalty has been an issue that has resonated more in Western Europe than in the Cold War battlegrounds of the developing and newly independent world, and there was no need for the United States to "win over" countries in Western Europe. Nor have Communist countries been in much of a position to complain about the U.S. death penalty—China, the former Soviet Union, and Cuba all used the death penalty with some frequency during this period, and China continues to carry out far more official executions each year than any other nation.³²

³⁰ For example, in *Breard v. Greene*, 523 U.S. 371 (1998), in which a Paraguayan on death row in Virginia was arguing that international law required a stay of his execution, the U.S. State and Justice Departments filed a brief in the Supreme Court opposing a stay of execution. See Brief for the United States as Amicus Curiae, *Breard* (No. 97-3190). More recently, in *Domingues v. State*, 961 P.2d 1279 (Nev. 1998), in which a juvenile offender on death row in Nevada was arguing that his death sentence violated international law, the Justice Department filed a brief with the Supreme Court disputing the offender's claims and urging the Court to deny review. See Brief for the United States as Amicus Curiae, *Domingues* (No. 98-8327).

³¹ Dudziak, *supra* note 1, at 185. The September 11, 2001 terrorist attacks on the United States occurred as this Book Review was going to press. The "war on terrorism" triggered by these events, although perhaps analogous in some ways to the Cold War, seems unlikely to implicate the same sort of human rights propaganda concerns implicated by the Cold War.

³² For example, in 1998, the United States carried out sixty-eight executions and China was reported to have carried out 1,067. See Death Penalty Information Center, *The Death Penalty: An International Perspective*, at <http://www.deathpenaltyinfo.org/dpicintl.html> (last visited October 1, 2001); see also Craig S. Smith, *China: Busy Executioners*, N.Y. Times, July 7, 2001, at A5, (noting that, according to Amnesty International, China had executed more people in the preceding three months than the rest of the world had executed in the preceding three years).

Still another explanation is that, given the broad public support in the United States for the death penalty, there has simply been less domestic traction for reform in this area than there was in the civil rights area.

There may be still another reason that relates to the above discussion of international human rights law: Much of the pressure on the United States in recent years regarding the death penalty has been framed in *legal* terms. It is argued that the U.S. juvenile death penalty, for example, violates the International Covenant on Civil and Political Rights, which the United States ratified in 1992.³³ It is also argued that the long wait on U.S. death row violates the ban on cruel, inhuman, or degrading treatment or punishment contained in both that treaty and a treaty outlawing torture. Perhaps naturally, the U.S. government has responded to these arguments in legal terms, noting that the United States has attached death penalty reservations to its treaty ratifications, that it has persistently objected to customary norms on the death penalty, and that it is limited in what it can do by principles of U.S. federalism.³⁴

The legal nature of this debate also may have induced a certain entrenchment of position on the part of U.S. officials. There is an all or nothing quality to legal arguments concerning the death penalty—the death penalty (or a particular aspect of it) either is or is not prohibited, and if it is prohibited, it must be ended now. U.S. officials, faced with that choice, have insisted that this form of punishment is not prohibited, and they have attempted to ensure that the United States formally opts out of any emerging prohibition. They also have flatly rejected the ability of international institutions, such as the International Court of Justice and the U.N.

³³ International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976; for the United States Sept. 8, 1992).

³⁴ See, e.g., the briefs cited *supra* note 30. I discuss these points in greater detail in a draft article, *The Juvenile Death Penalty, International Law, and the Erosion of National Consent* (Jan. 2, 2001) (unpublished manuscript, on file with the Virginia Law Review Association). One partial exception to the legal orientation of these challenges is an amicus curiae brief filed recently in a Supreme Court case challenging the constitutionality of imposing the death penalty on the mentally retarded. See Brief of Amici Curiae Diplomats, *McCarver v. North Carolina* (No. 00-8727) (filed June 8, 2001). This brief, submitted on behalf of a group of former U.S. diplomats, focuses in part on international legal arguments, but it also places significant emphasis on the foreign policy consequences of the U.S. death penalty practice.

Human Rights Commission, to override U.S. law on this issue. This rejection may make it more difficult for the United States to change its death penalty practices, because such a change might appear to be a tacit acknowledgement that these international institutions have a certain authority that U.S. officials have denied. In a sense, these responses by U.S. officials are not surprising: It may be human nature to resist outside pressure, and the more coercive this pressure, the more resistance it is likely to generate.

Whatever the reasons, the lack of a significant effect on the U.S. death penalty further confirms the contingency of the type of foreign relations effect that Professor Dudziak describes. Professor Dudziak herself suggests such contingency by noting that domestic and international attention on the Vietnam War ultimately eclipsed the foreign relations pressures relating to U.S. race relations.³⁵ This contingency is further heightened by the fact that foreign relations pressures will often push in more than one direction: They may provide a reason for changing domestic practices (to improve the U.S. image abroad), but they may simultaneously provide a reason *not* to change domestic practices (to avoid being unduly influenced by foreign pressure). As Professor Dudziak notes, for example, Cold War concerns were sometimes invoked to *oppose* civil rights reform, on the ground that the reform efforts were responses to Communist propaganda and influence.³⁶ It is difficult to predict in advance which of these two opposing pressures will prevail.

III. MEANINGFUL REFORM?

In addition to being contingent, there is no assurance that the foreign relations effects described by Professor Dudziak, when they do occur, will be either meaningful or positive. As Professor Dudziak herself notes, foreign affairs concerns often have been used to justify reduction of individual liberties, even in connection with the civil rights movement. For example, they were used to justify restrictions on the international travel and speech of outspoken critics of U.S. race relations, such as Paul Robeson, W.E.B. Du-

³⁵ See Dudziak, *supra* note 1, at 208.

³⁶ See, e.g., *id.* at 89, 186.

bois, William Patterson, and Josephine Baker.³⁷ One could mention other events during this period as well, such as the various anti-Communism hearings and ill-founded accusations associated with McCarthyism and President Truman's invocation of Cold War concerns as a basis for attempting to seize the nation's steel mills, an effort repudiated by the Supreme Court in the 1952 *Youngstown* decision.³⁸

Another danger that Professor Dudziak touches on at times is that efforts to respond to international pressure may be more symbolic than real. In part, this is because the concern is with the United States' external *image*, not necessarily with meaningful internal reform. In Professor Dudziak's narrative, for example, the foreign press often treats symbolic commitments to civil rights reform—for example, civil rights marches on Washington and highly-publicized Supreme Court opinions—as if they were themselves substantial progress on civil rights.³⁹ Another factor that may contribute to this symbol-over-substance problem is that the foreign relations pressures are likely to have more impact on the Executive Branch than on Congress, yet genuine nationwide reform may require congressional action. American federalism further complicates this dynamic, because there is no assurance that receptivity to these pressures at the national level will be translated into action at the state and local levels.

Coincidentally, another book recently appeared addressing the same general topic addressed by Professor Dudziak—the relationship between foreign affairs and U.S. civil rights reform. In *International Politics and Civil Rights Policies in the United States 1941–1960*⁴⁰ (a book that is not as comprehensive or as vividly written as Professor Dudziak's book, but which is somewhat more theoretical), Professor Azza Layton reaches a more pessimistic conclusion regarding the degree to which foreign relations generated positive civil rights reform. She states, for example:

³⁷ *Id.* at 61–77.

³⁸ See *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

³⁹ Dudziak, *supra* note 1, at 107–08, 147–48, 194–97 (discussing foreign press coverage of *Brown v. Board of Education*, *Cooper v. Aaron*, and the 1963 March on Washington, respectively).

⁴⁰ Azza Salama Layton, *International Politics and Civil Rights Policies in the United States 1941–1960*, at 151 (2000).

Instead of genuinely addressing problems of discrimination, violence, and the denial of rights to black America, the federal government directed its resources to glazing over problems and trying to change, through public relations, the world's perception of American race relations.⁴¹

That is the sort of concern I have in mind.⁴²

Professor Dudziak does acknowledge this possibility at times in her book. For example, she notes that “[m]easured, at least, by the degree and pace of integration, it may be that [the Supreme Court’s dramatic 1958 decision in *Cooper v. Aaron*] succeeded more in maintaining democracy’s image than in actually desegregating the schools.”⁴³ But, overall, she adopts a fairly optimistic perspective concerning the significance of the foreign relations-induced changes during this period. For example, she states at one point that “American leaders had long understood that social change *itself* was the only effective way to convince foreign audiences that the nation was committed to its professed principles of liberty and equality.”⁴⁴ The evidence that she presents, however, does not necessarily compel this conclusion.

Interestingly, this problem of elevating symbol over substance, like the problem of excessive legalization of the terms of the debate, is also characteristic of international human rights law. Human rights “progress” is often said to be achieved when nations verbally express support for U.N. resolutions or sign or ratify human rights treaties, even if they continue to oppress their populations. For example, China has claimed human rights progress by signing the International Covenant on Civil and Political Rights and by ratifying the International Covenant on Economic,

⁴¹ Id.

⁴² In his widely-discussed book, *The Hollow Hope*, Professor Gerald Rosenberg expressed a similar concern with respect to domestic reform efforts that are overly court-centered, noting that “symbolic victories may be mistaken for substantive ones, covering a reality that is distasteful.” Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* 340 (1991).

⁴³ Dudziak, *supra* note 1, at 151; see also *id.* at 13 (“[C]ivil rights reforms that made the nation look good might be sufficient.”).

⁴⁴ *Id.* at 213 (emphasis added); see also *id.* at 145 (“As had been the case with *Brown*, strong federal government action would always provide the greatest benefit [to the goal of rehabilitating America’s image abroad].”).

Social and Cultural Rights⁴⁵—a human rights treaty that the United States still has not ratified.⁴⁶ In terms of its external commitment to human rights treaties, China in some ways now looks better than the United States. One does not need to go out on a limb, however, to suggest that there is a gap between China's external commitments on these issues and its actual practices.⁴⁷

This sort of empty commitment to international human rights obligations is actually harder to achieve in the United States than in some other countries, because the U.S. Constitution deems treaties to be the supreme law of the land⁴⁸ and because the United States has a strong judiciary with a long history of judicial review. This may further explain why the United States has been more reluctant than many countries to ratify the human rights treaties, and why it has so strictly limited its consent to these treaties when it has ratified them: It actually takes them seriously. This point returns us to the theme emphasized above: There is an important difference, from a U.S. perspective, between international pressure and international *legal* pressure, a fact illustrated both by the history of U.S. involvement with international human rights law and by U.S. responses to international pressures concerning the death penalty.

CONCLUSION

In sum, Professor Dudziak's vivid and well-documented account of the relationship between foreign affairs and U.S. civil rights reform invites at least two cautionary lessons. First, there are risks associated with treating international policy issues as international

⁴⁵ See John J. Goldman & Henry Chu, *China Signs Human Rights Pact Amid Skepticism; Treaty: Activists Hail Action But Fear Beijing Won't Fully Implement International Agreement*, L.A. Times, Oct. 6, 1998, at A6; Henry Chu, *China Ratifies U.N. Accord on Human Rights*, L.A. Times, Mar. 1, 2001, at A9.

⁴⁶ International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 19, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976).

⁴⁷ See, e.g., Amnesty International Report 2001, at <http://web.amnesty.org/web/ar2001.nsf/regASA/regASA?OpenDocument> (last visited October 1, 2001) (describing repression of dissent, arbitrary detention, lack of due process, mistreatment of prisoners, and other human rights abuses in China). The surreal nature of international human rights law was further demonstrated recently when the United States was voted off the United Nations Commission on Human Rights, a body that includes nations such as Libya and Sudan. See Barbara Crossette, *U.S. is Voted Off Rights Panel of the U.N. for the First Time*, N.Y. Times, May 4, 2001, at A1.

⁴⁸ U.S. Const. art. VI, cl. 2.

legal issues. Among other things, this sort of legalization of the issues can unduly limit the terms of the debate and can produce additional backlash at the domestic level. This may be part of the reason for U.S. disassociation from international human rights regimes during the 1950s and 1960s, and for the continuing U.S. resistance to international pressures concerning the death penalty. Second, in considering the effects of foreign relations pressures on domestic reform, there is a danger of assuming that symbolic reforms constitute real progress. As illustrated by international human rights law, there is often a significant gap between the external rhetoric and image that nations present to the world community and the seriousness of their internal commitments to reform.